Straddling Two Laws: Jewish and Islamic Courts in 19th-Century Morocco

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The document at right encapsulates the quotidian multiplicity of Morocco Jews’ legal lives. On one side is a contract in Arabic attesting a sale of real estate; on the other is another contract, in Hebrew, attesting the same sale. The two contracts are the same, yet different. They describe the same transfer of property, in two different languages and following conventions of two different legal orders. This doubled document encapsulates how Jews lived their lives straddling two sets of laws, with one foot in the system of Jewish courts and the other in the parallel system of Islamic courts.

Jewish law thrived in 19th-century Morocco, as in much of the Islamic world; Jews had the right to adjudicate intra-Jewish civil cases in their own courts. But Jews’ legal autonomy did not mean that they were legally isolated. On the contrary, Jews’ legal lives were largely lived in others’ courts, especially in shari’a courts that applied Islamic law. Shari’a courts held jurisdiction over all cases involving Muslims. Since Jews’ commercial endeavors involved Muslims, they had reason to visit Islamic courts on a regular basis. Moreover, Jews voluntarily used Islamic courts even for intra-Jewish cases, which fell under the jurisdiction of Jewish courts. Jews moved frequently and relatively easily between Morocco’s Jewish and Islamic legal institutions.

The practice of drawing up the same bill of sale in two different courts is emblematic of the ways in which Jews straddled multiple legal orders. On Wednesday, 10 November 1875, Meir Ibn Ḥayim and his brother Yehudah appeared before two Islamic notaries in Marrakesh, one of Morocco’s capital cities and an important economic, religious, and cultural center. These notaries were appointed as court officials, and many occupied stalls in the marketplace (outside the Jewish quarter). There they drew up legal documents and signed them, thereby ensuring that the contracts would
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لا يوجد نص يمكن قراءته بشكل طبيعي من الصورة المقدمة.
hold up in a shari’a court. The Ibn Ḥayim brothers wanted to record Meir’s sale of two rooms in the city’s Jewish quarter to Yehudah for 550 mithqals. They paid a standard fee for writing and signing a bill of sale.

The next day, the Ibn Ḥayim brothers registered the same sale with Jewish notaries, which involved paying a second notarization fee. These notaries functioned as court appointees, although unlike their Muslim counterparts, they operated within the Jewish quarter since they primarily—although not exclusively—catered to Jews. On the back of the Arabic bill of sale, the Jewish notaries wrote out a second bill of sale almost identical to the first, though written in Hebrew letters and according to Jewish legal conventions. In short, Meir and Yehudah paid two sets of notaries to record the same sale of the same two rooms.

Although there were few substantive differences between the two sides of the document, they were not exact translations of each other. The Islamic bill of sale followed the standard template for such contracts according to Islamic law. It was written in classical Arabic, a language reserved for reading and writing that no one (neither Muslims nor Jews) spoke in daily life. We can be fairly certain that neither Meir nor Yehudah was able to read the document, since the vast majority of Jews in pre-colonial Morocco could not read Arabic. They would, however, have been able to communicate with the Muslim notaries, since the Judeo-Arabic they spoke was quite close to the dialect of Arabic spoken by Marrakshi Muslims.

The Jewish bill of sale similarly used clauses stipulated in Jewish law, with the same legal implications as those in the Islamic document but which differed significantly in the details. This second version of the contract, written mainly in Hebrew with some stock phrases in Aramaic and a few words here and there in Judeo-Arabic, reflected the standard practices of Moroccan Jewish notaries.

Meir and Yehudah’s choice to notarize their transaction in a shari’a court was a common strategy with which to avoid the pitfalls of the existence of multiple legal orders. Although the brothers had the right to adjudicate this sort of case in a Jewish court, it was conceivable that one of them—or even a third party—would contest the sale in a shari’a court. If this were to happen, the only way to be sure that their sale would be honored was to document it according to Islamic law, since shari’a courts only accepted evidence drawn up in Arabic and signed by two Muslim notaries. The boundaries dividing different jurisdictions in Morocco were fluid enough that it made sense to cover all one’s bases by having even intra-Jewish contracts drawn up in Islamic courts.

The brothers’ decision to draw up a parallel contract in Hebrew is harder to explain. Theoretically, Jewish law recognized monetary contracts drawn up in non-Jewish courts. If someone sued Meir or Yehudah in a Jewish court, their Arabic document should have been sufficient. That they bothered getting a second, Jewish bill of sale speaks not to a legal strategy, but to a cultural one. Jewish law was important as a marker of Jewish identity. Going to Jewish courts was one of the ways in which Jews signaled their participation in the Jewish community and their acceptance of the authority vested in Jewish communal leaders.

Meir and Yehudah’s double bill of sale embodies the ways in which Jewish and non-Jewish courts existed not only alongside one another, but overlapping—sometimes on the very same sheet of paper. In Morocco, real boundaries separated Jewish and non-Jewish law; the existence of separate legal institutions itself testifies to these divisions. But these boundaries were also porous and flexible, just like those separating Jews from the non-Jewish society in which they lived.